

Quapaw Tribal Gaming Agency
P. O. Box 405
Quapaw, Oklahoma 74363
918-919-6020
Fax 918-919-6040



August 26, 2011

Ms. Tracie L. Stevens, Chairwoman
National Indian Gaming Commission
1441 L St. NW, Suite 9100
Washington, DC 20005

Re: Group 4 Regulations - 25 C.F.R. Parts 571, 537, 556, and 558

Dear Chairwoman Stevens,

The Quapaw Tribal Gaming Agency ("QTGA") would like to thank the National Indian Gaming Commission ("NIGC") for this opportunity to participate in this consultation process. The QTGA is pleased to comment on the NIGC's proposed changes to the following preliminary draft regulations: 25 C.F.R. Parts 571, 537, 556, and 558. The QTGA appreciates the NIGC's ongoing efforts to ensure that its regulations are both consistent with the Indian Gaming Regulatory Act ("IGRA") and respectful of tribal sovereignty, and hopes that the comments below are helpful to the NIGC during this regulatory review process.

25 C.F.R. Part 571

The QTGA appreciates the NIGC's proposal in § 571.4 to issue investigation closure letters advising tribes that the NIGC's investigation has terminated. Among other things, such letters will be beneficial to tribes in documenting the closure of an NIGC investigation. Nonetheless, this proposal raises a few issues that we believe need additional clarification. For instance, the potential uncertainty created by the final sentence of § 571.4, which permits the NIGC to take "further action . . . based on the investigation," may limit the intended benefits of this regulation. We suggest the NIGC clarify that such further investigative action will take place only if new information that was unavailable to the NIGC during the initial investigation comes to light. Also, we recommend that the NIGC incorporate a procedure for notifying tribes of the NIGC's intent to reopen a closed investigation. Such a procedure would ensure that tribes are put on notice in the event that a closed investigation is reopened.

The QTGA would also like to suggest a few semantic changes which will further clarify the NIGC's monitoring and investigative responsibilities. As drafted, the definition of "person" in § 571.2 includes any "individual, Indian tribe, corporation, partnership, or other organization or entity," regardless of his or her connection to a gaming operation. The QTGA suggests that the NIGC amend this definition to make clear that the term includes only those individuals, Indian tribes, corporations, partnerships, or other organizations or entities that possess records relating to a tribal gaming operation by way of their involvement in managing, operating, or providing services to a tribal gaming operation. Also, as drafted, § 571.5(b) indicates that NIGC representatives, in carrying out their investigative responsibilities, can enter "a gaming operation

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or other facility.” We believe this sentence should be clarified to mean that officials will have to present identification when entering a gaming operation or other related facility for the purpose of enforcing the Act.” Finally, § 571.6(d) imposes a mandatory requirement on persons not on Indian lands, requiring them to make their papers, books, and records available to the NIGC during an investigation. The NIGC’s investigative powers should be carefully limited when applied to third parties located off Indian lands. The QTGA recommends the NIGC consider replacing the word “shall” with “may voluntarily,” which imposes a permissive rather than mandatory requirement on third parties. The QTGA does not believe that such a change will interfere with the NIGC’s investigative authority since the NIGC still retains subpoena authority under the IGRA.

25 C.F.R. Part 537

The QTGA strongly supports the NIGC’s proposed changes to 25 C.F.R. Part 537, particularly § 537.1(d), which would help streamline the background investigation process for management contractors and help alleviate some of the administrative burdens of the management contract approval process. By minimizing the submission requirements for persons or entities that have already been licensed pursuant to a tribal-state compact, this proposed change would eliminate duplicative reporting requirements.

The QTGA encourages the NIGC to consider adopting a regulatory definition of “institutional investor” in § 537.1(d) that will provide some guidance as to the type of investors that will fall into this category. Without such guidance, it is unclear whether the NIGC intends the term to apply to any company lending money or to only those large-scale investors involved in the public bond trading business.

25 C.F.R. Part 556

The QTGA is highly supportive of the NIGC’s decision to convert the pilot program into an official regulatory process. The procedure currently mandated by the regulations requires tribes to submit to the NIGC a completed application file, which we believe is unnecessary and overly burdensome. The pilot program, which eliminates the cumbersome application file submission process, has proven successful in eliminating unnecessary paperwork and allowing tribes to more quickly and efficiently process license applications. By formalizing the pilot program, this regulation is now more consistent with the IGRA, which vests tribes with licensure authority and the NIGC with oversight authority over such functions. To ensure maximum flexibility, the QTGA suggests that any future alterations to the pilot program be issued in the form of guidance and not regulation.

The QTGA would like to suggest, for the NIGC’s consideration, removal of the ordinance amendment requirement in § 556.8, which the QTGA believes is extraneous and beyond the scope of the NIGC’s authority under the IGRA. While the IGRA entrusts the NIGC with important oversight authority, the IGRA does not grant the NIGC authority to require tribal governments to amend their gaming ordinances to comply with new regulations. In any case, the QTGA does not believe such a requirement is necessary given that tribes comply with NIGC regulations, regardless of whether the regulations are incorporated in their gaming ordinances.

25 C.F.R. Part 558

The QTGA does not have any objections to the NIGC's proposed change to require notice of issued and denied licenses. Section 2710 of the IGRA provides that tribes must notify the NIGC of background investigation results and issued licenses. The NIGC's proposed change is thus consistent with the notice requirements under the IGRA.

The QTGA supports the proposed change to § 558.2(c)(2), which allows for the forwarding of denied suitability determinations to the Indian Gaming Individuals Record System. Information on an applicant's previous suitability determinations can be helpful to tribal gaming agencies such as the QTGA in determining an applicant's current suitability.

The QTGA would like to suggest, for the NIGC's consideration, clarification on the following issues. First, the QTGA recommends replacing references to "eligibility determinations" with "suitability determinations." We believe this is an important distinction since the licensing process is designed to verify the suitability, not the eligibility, of an applicant to obtain a gaming license. Second, the QTGA recommends amending the first sentence in § 558.2(c) to clarify that the notice requirement will apply for only those licenses that are denied. As drafted, the sentence requires notice if a tribe does not license an applicant. But notice should only be required when a tribe denies a license on suitability grounds, since there are non-suitability related reasons for not issuing a license. And third, the QTGA is concerned by the ordinance amendment requirement in § 558.6, which requires all future ordinance submissions to be amended to comply with the new regulations. As discussed above, the IGRA does not grant the NIGC authority to direct tribes to amend their gaming ordinances. In any case, we believe this requirement is unnecessary given that tribes are already required to comply with the procedures in the NIGC's regulations, regardless of the inclusion of such procedures in their gaming ordinances.

In conclusion, the QTGA would like to thank the NIGC for this opportunity to participate in this consultation and comment process. We hope that you give meaningful consideration to our comments as you proceed with your deliberations.

Sincerely,

A handwritten signature in cursive script, reading "Barbara Kyser-Collier".

Barbara Kyser-Collier
Director, QTGA